

SECOND REGULAR SESSION

HOUSE BILL NO. 2756

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOUGH.

6793H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 192.2490, RSMo, and section 192.2495 as enacted by house revision bill no. 1299 merged with senate bill no. 491, ninety-seventh general assembly, second regular session, and to enact in lieu thereof two new sections relating to background checks for prospective employees of health care providers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 192.2490, RSMo, and section 192.2495 as enacted by house revision bill no. 1299 merged with senate bill no. 491, ninety-seventh general assembly, second regular session are repealed and two new sections enacted in lieu thereof, to be known as sections 192.2490 and 192.2495, to read as follows:

192.2490. 1. After an investigation and a determination has been made to place a person's name on the employee disqualification list, that person shall be notified in writing mailed to his or her last known address that:

(1) An allegation has been made against the person, the substance of the allegation and that an investigation has been conducted which tends to substantiate the allegation;

(2) The person's name will be included in the employee disqualification list of the department;

(3) The consequences of being so listed including the length of time to be listed; and

(4) The person's rights and the procedure to challenge the allegation.

2. If no reply has been received within thirty days of mailing the notice, the department may include the name of such person on its list. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director or the director's designee, based upon the criteria contained in subsection 9 of this section.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 3. If the person so notified wishes to challenge the allegation, such person may file an
15 application for a hearing with the department. The department shall grant the application within
16 thirty days after receipt by the department and set the matter for hearing, or the department shall
17 notify the applicant that, after review, the allegation has been held to be unfounded and the
18 applicant's name will not be listed.

19 4. If a person's name is included on the employee disqualification list without the
20 department providing notice as required under subsection 1 of this section, such person may file
21 a request with the department for removal of the name or for a hearing. Within thirty days after
22 receipt of the request, the department shall either remove the name from the list or grant a
23 hearing and set a date therefor.

24 5. Any hearing shall be conducted in the county of the person's residence by the director
25 of the department or the director's designee. The provisions of chapter 536 for a contested case
26 except those provisions or amendments which are in conflict with this section shall apply to and
27 govern the proceedings contained in this section and the rights and duties of the parties involved.
28 The person appealing such an action shall be entitled to present evidence, pursuant to the
29 provisions of chapter 536, relevant to the allegations.

30 6. Upon the record made at the hearing, the director of the department or the director's
31 designee shall determine all questions presented and shall determine whether the person shall
32 be listed on the employee disqualification list. The director of the department or the director's
33 designee shall clearly state the reasons for his or her decision and shall include a statement of
34 findings of fact and conclusions of law pertinent to the questions in issue.

35 7. A person aggrieved by the decision following the hearing shall be informed of his or
36 her right to seek judicial review as provided under chapter 536. If the person fails to appeal the
37 director's findings, those findings shall constitute a final determination that the person shall be
38 placed on the employee disqualification list.

39 8. A decision by the director shall be inadmissible in any civil action brought against a
40 facility or the in-home services provider agency and arising out of the facts and circumstances
41 which brought about the employment disqualification proceeding, unless the civil action is
42 brought against the facility or the in-home services provider agency by the department of health
43 and senior services or one of its divisions.

44 9. The length of time the person's name shall appear on the employee disqualification
45 list shall be determined by the director of the department of health and senior services or the
46 director's designee, based upon the following:

47 (1) Whether the person acted recklessly or knowingly, as defined in chapter 562;

48 (2) The degree of the physical, sexual, or emotional injury or harm; or the degree of the
49 imminent danger to the health, safety or welfare of a resident or in-home services client;

50 (3) The degree of misappropriation of the property or funds, or falsification of any
51 documents for service delivery of an in-home services client;

52 (4) Whether the person has previously been listed on the employee disqualification list;

53 (5) Any mitigating circumstances;

54 (6) Any aggravating circumstances; and

55 (7) Whether alternative sanctions resulting in conditions of continued employment are
56 appropriate in lieu of placing a person's name on the employee disqualification list. Such
57 conditions of employment may include, but are not limited to, additional training and employee
58 counseling. Conditional employment shall terminate upon the expiration of the designated
59 length of time and the person's submitting documentation which fulfills the department of health
60 and senior services' requirements.

61 10. The removal of any person's name from the list under this section shall not prevent
62 the director from keeping records of all acts finally determined to have occurred under this
63 section.

64 11. The department shall provide the list maintained pursuant to this section to other
65 state departments upon request and to any person, corporation, organization, or association who:

66 (1) Is licensed as an operator under chapter 198;

67 (2) Provides in-home services under contract with the department of social services or
68 its divisions;

69 (3) Employs [nurses and nursing assistants] **health care providers as defined in section**
70 **376.1350** for temporary or intermittent placement in health care facilities;

71 (4) Is approved by the department to issue certificates for nursing assistants training;

72 (5) Is an entity licensed under chapter 197;

73 (6) Is a recognized school of nursing, medicine, or other health profession for the
74 purpose of determining whether students scheduled to participate in clinical rotations with
75 entities described in subdivision (1), (2), or (5) of this subsection are included in the employee
76 disqualification list; or

77 (7) Is a consumer reporting agency regulated by the federal Fair Credit Reporting Act
78 that conducts employee background checks on behalf of entities listed in [subdivisions (1), (2),
79 (5), or (6) of] this subsection. Such a consumer reporting agency shall conduct the employee
80 disqualification list check only upon the initiative or request of an entity described in
81 [subdivisions (1), (2), (5), or (6) of] this subsection when the entity is fulfilling its duties required
82 under this section.

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84 The information shall be disclosed only to the requesting entity. The department shall inform
85 any person listed above who inquires of the department whether or not a particular name is on

86 the list. The department may require that the request be made in writing. No person,
87 corporation, organization, or association who is entitled to access the employee disqualification
88 list may disclose the information to any person, corporation, organization, or association who
89 is not entitled to access the list. Any person, corporation, organization, or association who is
90 entitled to access the employee disqualification list who discloses the information to any person,
91 corporation, organization, or association who is not entitled to access the list shall be guilty of
92 an infraction.

93 12. No person, corporation, organization, or association who received the employee
94 disqualification list under subdivisions (1) to (7) of subsection 11 of this section shall knowingly
95 employ any person who is on the employee disqualification list. Any person, corporation,
96 organization, or association who received the employee disqualification list under subdivisions
97 (1) to (7) of subsection 11 of this section, or any person responsible for providing health care
98 service, who declines to employ or terminates a person whose name is listed in this section shall
99 be immune from suit by that person or anyone else acting for or in behalf of that person for the
100 failure to employ or for the termination of the person whose name is listed on the employee
101 disqualification list.

102 13. Any employer or vendor as defined in sections 197.250, 197.400, 198.006, 208.900,
103 or 192.2400 required to deny employment to an applicant or to discharge an employee,
104 provisional or otherwise, as a result of information obtained through any portion of the
105 background screening and employment eligibility determination process under section 210.903,
106 or subsequent, periodic screenings, shall not be liable in any action brought by the applicant or
107 employee relating to discharge where the employer is required by law to terminate the employee,
108 provisional or otherwise, and shall not be charged for unemployment insurance benefits based
109 on wages paid to the employee for work prior to the date of discharge, pursuant to section
110 288.100, if the employer terminated the employee because the employee:

111 (1) Has been found guilty, pled guilty or nolo contendere in this state or any other state
112 of a crime as listed in subsection 6 of section 192.2495;

113 (2) Was placed on the employee disqualification list under this section after the date of
114 hire;

115 (3) Was placed on the employee disqualification registry maintained by the department
116 of mental health after the date of hire;

117 (4) Has a disqualifying finding under this section, section 192.2495, or is on any of the
118 background check lists in the family care safety registry under sections 210.900 to 210.936; or

119 (5) Was denied a good cause waiver as provided for in subsection 10 of section
120 192.2495.

121 14. Any person who has been listed on the employee disqualification list may request
122 that the director remove his or her name from the employee disqualification list. The request
123 shall be written and may not be made more than once every twelve months. The request will be
124 granted by the director upon a clear showing, by written submission only, that the person will
125 not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the
126 falsification of any documents of service delivery to an in-home services client. The director
127 may make conditional the removal of a person's name from the list on any terms that the director
128 deems appropriate, and failure to comply with such terms may result in the person's name being
129 relisted. The director's determination of whether to remove the person's name from the list is not
130 subject to appeal.

 192.2495. 1. For the purposes of this section, the term "provider" means any person,
2 corporation or association who:

3 (1) Is licensed as an operator pursuant to chapter 198;

4 (2) Provides in-home services under contract with the department of social services or
5 its divisions;

6 (3) Employs [nurses or nursing assistants] **health care providers as defined in section**
7 **376.1350** for temporary or intermittent placement in health care facilities;

8 (4) Is an entity licensed pursuant to chapter 197;

9 (5) Is a public or private facility, day program, residential facility or specialized service
10 operated, funded or licensed by the department of mental health; or

11 (6) Is a licensed adult day care provider.

12 2. For the purpose of this section "patient or resident" has the same meaning as such term
13 is defined in section 43.540.

14 3. Prior to allowing any person who has been hired as a full-time, part-time or temporary
15 position to have contact with any patient or resident the provider shall, or in the case of
16 temporary employees hired through or contracted for an employment agency, the employment
17 agency shall prior to sending a temporary employee to a provider:

18 (1) Request a criminal background check as provided in section 43.540. Completion of
19 an inquiry to the highway patrol for criminal records that are available for disclosure to a
20 provider for the purpose of conducting an employee criminal records background check shall be
21 deemed to fulfill the provider's duty to conduct employee criminal background checks pursuant
22 to this section; except that, completing the inquiries pursuant to this subsection shall not be
23 construed to exempt a provider from further inquiry pursuant to common law requirements
24 governing due diligence. If an applicant has not resided in this state for five consecutive years
25 prior to the date of his or her application for employment, the provider shall request a nationwide
26 check for the purpose of determining if the applicant has a prior criminal history in other states.

27 The fingerprint cards and any required fees shall be sent to the highway patrol's central
28 repository. The first set of fingerprints shall be used for searching the state repository of criminal
29 history information. If no identification is made, the second set of fingerprints shall be
30 forwarded to the Federal Bureau of Investigation, Identification Division, for the searching of
31 the federal criminal history files. The patrol shall notify the submitting state agency of any
32 criminal history information or lack of criminal history information discovered on the individual.
33 The provisions relating to applicants for employment who have not resided in this state for five
34 consecutive years shall apply only to persons who have no employment history with a licensed
35 Missouri facility during that five-year period. Notwithstanding the provisions of section
36 610.120, all records related to any criminal history information discovered shall be accessible
37 and available to the provider making the record request; and

38 (2) Make an inquiry to the department of health and senior services whether the person
39 is listed on the employee disqualification list as provided in section 192.2490.

40 4. When the provider requests a criminal background check pursuant to section 43.540,
41 the requesting entity may require that the applicant reimburse the provider for the cost of such
42 record check. When a provider requests a nationwide criminal background check pursuant to
43 subdivision (1) of subsection 3 of this section, the total cost to the provider of any background
44 check required pursuant to this section shall not exceed five dollars which shall be paid to the
45 state. State funding and the obligation of a provider to obtain a nationwide criminal background
46 check shall be subject to the availability of appropriations.

47 5. An applicant for a position to have contact with patients or residents of a provider
48 shall:

49 (1) Sign a consent form as required by section 43.540 so the provider may request a
50 criminal records review;

51 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
52 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge
53 and shall include any suspended imposition of sentence, any suspended execution of sentence
54 or any period of probation or parole; [and]

55 (3) Disclose if the applicant is listed on the employee disqualification list as provided
56 in section 192.2490; **and**

57 **(4) Disclose if the applicant is listed on any of the background checks in the family**
58 **care safety registry established under section 210.903. A provider not otherwise prohibited**
59 **from employing an individual listed on such background checks may deny employment to**
60 **an individual listed on any of the background checks in such registry.**

61 6. An applicant who knowingly fails to disclose his or her criminal history as required
62 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class

63 A misdemeanor if the provider knowingly hires or retains a person to have contact with patients
64 or residents and the person has been found guilty in this state or any other state or has been found
65 guilty of a crime, which if committed in Missouri would be a class A or B felony violation of
66 chapter 565, 566 or 569, or any violation of subsection 3 of section 198.070 or section 568.020.

67 7. Any in-home services provider agency or home health agency shall be guilty of a class
68 A misdemeanor if such agency knowingly employs a person to provide in-home services or home
69 health services to any in-home services client or home health patient and such person either
70 refuses to register with the family care safety registry or is listed on any of the background check
71 lists in the family care safety registry pursuant to sections 210.900 to 210.937.

72 8. The highway patrol shall examine whether protocols can be developed to allow a
73 provider to request a statewide fingerprint criminal records review check through local law
74 enforcement agencies.

75 9. A provider may use a private investigatory agency rather than the highway patrol to
76 do a criminal history records review check, and alternatively, the applicant pays the private
77 investigatory agency such fees as the provider and such agency shall agree.

78 10. Except for the hiring restriction based on the department of health and senior services
79 employee disqualification list established pursuant to section 192.2490, the department of health
80 and senior services shall promulgate rules and regulations to waive the hiring restrictions
81 pursuant to this section for good cause. For purposes of this section, "good cause" means the
82 department has made a determination by examining the employee's prior work history and other
83 relevant factors that such employee does not present a risk to the health or safety of residents.

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